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COMMISSION ON HUMAN RIGHTS

Forty-ninth session

SUMMARY RECORD OF THE 34th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 23 February 1993, at 3 p.m.

Chairman: Mr. FLINTERMAN (Netherlands)

later: Mr. ENNACEUR (Tunisia)

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(a) Torture and other cruel, inhuman or degrading treatment of punishment;

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(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES;

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (agenda item 10) (continued) (E/CN.4/1993/4, 20, 21*, 22, 23 and Add.1-2, 24, 25 and Add.1, 26-28 and 86; E/CN.4/1993/NGO/7, 9, 10, 18-20 and 22; E/CN.4/1992/17 and Add.1, 18 and Add.1 and 20; E/CN.4/Sub.2/1992/9 and Add.1, 17, 19, 22, 23/Rev.1 and 24 and Add.1-3; A/47/662; A/RES/47/109)

1. Mr. THOMSON (Australia) said that the appalling human rights abuses documented in the reports before the Commission illustrated the need for it to improve its methods of obtaining more reliable information and to strengthen procedures at national and international levels.

2. His delegation welcomed the adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearance as a clear and unequivocal statement of the international community's abhorrence of those practices. The most important aspects of the Declaration were its condemnation of impunity and its stipulation that any person alleging that another person had been subjected to enforced disappearance had the right to complain to a competent and independent State authority.

3. At the previous session of the Commission, his delegation had expressed concern at the inadequacy of the resources made available to the Working Group on Enforced or Involuntary Disappearances mentioning that they had not been increased for 12 years. That situation was a major obstacle to the fulfilment of the Working Group's mandate, given the massive backlog of reports and cases which had built up.

4. His delegation noted with interest that the Working Group had sent out a questionnaire to Governments on the question of impunity, raising issues such as the value of habeas corpus as a tool for combating disappearances and the importance of the proper functioning of the administration of justice as well as the need for persons investigating disappearances to be protected, for the results of investigations to be made public and for offences involving gross human rights violations to be tried by civilian courts.

5. While commending the report of the Special Rapporteur on questions relevant to torture (E/CN.4/1993/26), his delegation regretted the absence or inadequacy of replies to many of the cases raised. As for the proposed optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, his delegation supported, in principle, a mechanism for regular preventive advisory visits by experts to prisons, but felt that many issues remained to be considered, including the need to ensure

complementarity between the protocol and other mechanisms, the question of funding, and ways and means of assisting States to implement the recommendations.

6. It agreed, however, with the Special Rapporteur's conclusion that the proposed optional protocol would not overlap with his own mandate, since its main thrust would be preventive in that the inspection of places of detention would make it possible to address the conditions and procedures which enabled acts of torture to occur. In that connection, he mentioned that Australia was a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and had taken the necessary steps to allow individual and inter-State complaints to be referred to the relevant committee.

7. His delegation was encouraged by the progress made by the Working Group on Arbitrary Detention, particularly with regard to its working methods. There had been a marked improvement in the information submitted to the Working Group, thanks to efficient use of its secretariat and the adoption of an adversarial rather than an accusatory procedure.

8. Full cooperation of States with the Commission's thematic mechanisms was of vital importance and the poor level of response to requests from the Working Group on Arbitrary Detention and the Special Rapporteur on questions relevant to torture was most regrettable. His delegation urged all Governments to support and cooperate with those mechanisms.

9. The reports before the Commission highlighted the importance of its current deliberations on institution-building and the effective implementation of human rights standards, work that his delegation strongly supported.

10. Mr. DA SILVA (Portugal), having stressed the importance of the Commission's standard-setting activities since the establishment of an adequate legal framework for human rights was vital, said that, for human rights to become a reality for every individual in the world, an effective system of implementation was needed, based on the standards adopted by the United Nations and serving as a common reference at the national and international levels.

11. The reports before the Commission emphasized the importance of an independent and efficient administration of justice in ensuring the identification and punishment of government officials who had committed abuses, investigating the fate of detainees and determining the lawfulness of their deprivation of liberty. In that regard, the judiciary bore a crucial responsibility, since it had the power to release detainees held under irregular conditions, to refuse evidence not freely given, and to uphold a detained person's basic rights, including the right to legal representation.

12. Judges were often, however, subjected to threats, pressure or inducements, and judicial bodies were often reluctant to deal with cases of serious human rights violations if they involved conflicts between citizens and State authorities, particularly if military personnel were involved. The question of impunity again arose. States had a duty to ensure an impartial investigation of human rights abuses, conducted by persons known for their

integrity and not linked to the Government or governing party, with the necessary authority to investigate members of the armed forces. His delegation therefore agreed with the Special Rapporteur on questions relevant to torture that the prosecution and punishment of offences constituting a violation of human rights should be dealt with by civilian courts.

13. The situation in the occupied territory of East Timor was extensively reflected in the reports before the Commission. In 1992 the Commission had expressed, by consensus, its concern at the human rights situation in East Timor and deplored the massacre that had occurred at Dili in November 1991. Since then, however, according to recent reports by Amnesty International and the United States State Department, the situation had not improved. Repression of political dissent and violations of basic human rights in the name of national security had continued, while torture and ill-treatment of suspects and detainees were widespread.

14. Although the Indonesian Government had undertaken, at the Commission's previous session, to investigate the actions of the security forces, bring to trial all those found responsible for the massacre at Dili, and implement the recommendations of the Special Rapporteur, particularly that concerning the need for civilian courts to be given jurisdiction over offences committed by members of the armed forces and the police, it had failed to honour any of those commitments. The fact that 10 members of the armed forces had been tried by a military court for infringements of military ethics and discipline and had received short prison sentences could not but reinforce the prevailing system of impunity.

15. The Indonesian Government had also failed to account effectively for those still missing following the massacre. It was hardly surprising therefore that, as pointed out in the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1993/25, para. 287), family members had been reluctant to pursue cases with local authorities, which had shown little interest in enabling them to use existing remedies. In addition, family members had allegedly been regularly threatened by persons supposed to be linked to official forces.

16. Further investigation was essential with adequate United Nations involvement to ensure that it was thorough and impartial. The observation made by the Secretary-General in his report on human rights and forensic science that national mechanisms often failed because they lacked the necessary cooperation of certain authorities, particularly where the deaths might have been caused by the police or army (E/CN.4/1993/20, para. 14), was particularly relevant to the situation existing in East Timor.

17. Despite the Indonesian Government's promises of humane treatment, proper legal representation and a fair trial, defendants had been held incommunicado and tortured to extract confessions, while defence lawyers had been subjected to political pressure from the authorities. Other citizens not involved in violent activities had been given lengthy prison sentences for trivial offences involving expressions of dissent. As recognized by the report of the United States State Department, the trials in Dili had not met international standards.

18. The treatment by the Indonesian authorities of the leader of the East Timorese resistance movement, Xanana Gusmão, had also given cause for concern and prompted the Special Rapporteur to send an urgent appeal on his behalf. Since Indonesia was illegally occupying East Timor, the provisions of article 2 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) were fully applicable to the case of Xanana Guzmão and any other East Timorese in detention, entitling them to a trial complying with international standards of fairness. However, Mr. Guzmão had not been allowed access to an independent lawyer, his right to presumption of innocence had not been respected and his alleged "admission" of guilt had been broadcast on television.

19. The territory of East Timor was becoming increasingly isolated and parliamentary delegations, foreign journalists and human rights organizations had experienced difficulty in gaining access. As a result, abuses such as those suffered by Mr. Guzmão were going unchallenged, because of a lack of communication with the outside world.

20. In the face of the deteriorating climate of impunity and mistrust prevailing in East Timor, and the failure of the Indonesian Government to honour its commitments, the Commission must not respond with silence and passivity if it wished to retain its credibility.

21. Mr. SUPANDAR (Indonesia) said that his delegation fully shared the view that torture was one of the most serious violations of human rights. However, it was clear from the Special Rapporteur's report (E/CN.4/1993/26) that the practice was still a worldwide phenomenon and not a monopoly of the developing countries. The fact that a country was not mentioned in the report did not necessarily mean it was free of torture, but was rather a reflection of imbalances in the communication procedure which resulted in uneven reporting.

22. For example, the report made no mention of the practice of torture in connection with the new phenomena of racism and xenophobia in certain countries. It was also regrettable that the report placed excessive reliance on communications from individuals and non-governmental organizations. It might, perhaps, be appropriate to apply the criteria of the admissibility of allegations, as provided for in the procedure under Economic and Social Council resolution 1503 (XLVIII) to the work of the thematic rapporteurs and working groups, since Governments were often asked to respond to communications of dubious and uncertain origin. In that connection, his delegation appreciated the Special Rapporteur's clarification that he took no position as to whether allegations were well-founded, but regretted that, in its report (E/CN.4/1993/25), the Working Group on Enforced or Involuntary Disappearances referred to allegations of disappearances as "cases", implying that they had genuinely occurred.

23. His Government was continuing to take the necessary steps to eliminate the practice of torture, notably by seeking to minimize abuses of power by law-enforcement officers and taking punitive measures against those found responsible. It had always cooperated with the thematic rapporteurs and working groups by responding to the allegations submitted and providing the necessary clarifications.

24. His delegation welcomed the cooperation also shown by other Governments is responding to communications and particularly the initiative taken by the Government of Sri Lanka in inviting the Working Group to visit its country.

25. Mrs. SILVERA NUNEZ (Cuba) said she regretted the difficulties caused by the growing number of sub-items included under item 10 at a time when the number of persons in detention was increasing every year, especially in countries where a vast gulf existed between the the rich and the poor. In the United States of America, for instance, homicide, violent crime and police violence seemed out of control and the incarceration rate was the highest in the world.

26. United States society was also plagued by inequality and racism. Although blacks represented only 12 per cent of the total population, they made up 40 per cent of the prison population. Discrimination pervaded every aspect of the criminal justice system. Blacks received harsher sentences for similar crimes, especially if the victim was white.

27. A further source of concern was the application of the death penalty to minors, in violation of international standards. Between 1970 and 1991, death sentences had been passed on more than 90 young people between the ages of 15 and 17, most of them from ethnic or national communities, while, at the end of 1992, 2,000 young people had been awaiting execution.

28. The report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1993/25 and Add.1) contained more alarming figures than those of recent years. Ten thousand new cases of disappearances in 36 countries had been communicated to the Group in 1992. Furthermore, the number of countries in which there were reports of disappearances had risen from 47 in 1991 to 58 in 1992. Since both figures reflected only the cases that had been brought to the Group's attention rather than all the actual cases, it was not difficult to conclude that the fight against that repugnant phenomenon must continue. In that context, cooperation by the Governments of the Member States was essential and her delegation regretted that some of them had failed to reply to the Working Group or had submitted incomplete replies.

29. Tribute must be paid to the important work being done in her country's region and elsewhere by many non-governmental organizations, which not only shed light on cases of disappearances but were also engaged in the campaign to prevent new cases. The Commission had, in 1992, concluded its work on the Declaration on the Protection of All Persons from Enforced Disappearance and its adoption without change by the General Assembly on 18 December 1992 was a positive contribution to that campaign. She stressed the need for the fullest possible dissemination of the text of the Declaration at both the national and global levels.

30. The report of the Special Rapporteur on questions relevant to torture (E/CN.4/1993/26) gave cause for alarm also. It was not just the fact that 700 new cases of allegations of torture had been communicated to him in 1992 or even the fact that half the 55 Governments from which information had been requested had failed to reply. What impressed her delegation most in the report was the substantial increase in allegations of torture against children at a time when the international community was loudly proclaiming

that children were entitled to special protection. In addition, the Special Rapporteur had rightly stated that a particularly despicable assault on human dignity was rape. Such conduct deserved special condemnation when it was carried out against detainees.

31. Both the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on questions relevant to torture stressed that the impunity of perpetrators of violations of human rights constituted an important factor in the continuation of such practices. At its most recent session, the Sub-Commission had decided to recommend the appointment of two of its members as special rapporteurs to prepare a study on the question and had submitted to the Commission a draft resolution to that effect. Her delegation would support that initiative and vote in favour of draft resolution V in the Sub-Commission's report.

32. The Sub-Commission should be encouraged to continue its examination of the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms and her delegation would thus vote in favour of draft decision 8. It would also support draft decision 11 on the study of the issue of the privatization of prisons.

33. With reference to the final report of the Sub-Commission's Special Rapporteurs on the right to freedom of opinion and expression (E/CN.4/Sub.2/1992/9 and Add.1), she thought it necessary to stress the full legitimacy of applying the limitations set out in national legislation to persons who, abusing that right, defended racist or xenophobic positions or incited hatred among various sectors of the population, in violation of the rights of other persons.

34. Mr. Ennaceur (Tunisia) took the Chair.

SITUATION OF HUMAN RIGHTS IN THE TERRITORY OF THE FORMER YUGOSLAVIA (agenda item 27) (continued) (E/CN.4/1993/L.16 and L.21)

Draft resolution on the situation of human rights in the territory of the former Yugoslavia (E/CN.4/1993/L.16)

35. Mr. LARSEN (Observer for Denmark), introducing the draft resolution on behalf of its sponsors, to which should be added the delegations of Barbados and Mauritius and the observers for Cameroon, Liechtenstein, Luxembourg, Madagascar and Malta, said he regretted that the Commission had been obliged to meet for the third time in six months to consider the question of human rights violations in the former Yugoslavia, but the Special Rapporteur's reports and those of various organizations all confirmed the sad fact that violations of human rights were continuing there on a massive scale.

36. The draft resolution was a long one, but the sponsors believed that it reflected as accurately as possible the grave situation prevailing in the former Yugoslavia. It had formed the subject of long and careful discussions with many delegations. While it could not satisfy everybody, he believed that it showed how the Commission could deal with a serious issue and emerge with meaningful results designed to promote respect for human rights.

37. The draft resolution condemned in the strongest terms all violations of human rights by all sides in the former Yugoslavia. The text made it clear, however, that primary responsibility for most of the violations, including the practice of ethnic cleansing, lay on the Serbian side.

38. The draft resolution recalled the continuing efforts of the International Conference on the former Yugoslavia and the co-Chairmen of its Steering Committee to achieve a lasting political settlement of the conflict in the former Yugoslavia. Apart from the other troubled areas in the former Yugoslavia, it also spoke at great length about the tragic events and violations of human rights in the Republic of Bosnia and Herzegovina.

39. The text also described the dangerous situation prevailing in Kosovo, because the sponsors believed it important that the parties involved should understand how seriously the Commission regarded the risk to local, national and regional peace in the area. Moreover, while not wishing to overburden the thematic rapporteurs, the sponsors believed that the collaboration between them and the Special Rapporteur had been an important factor in making the reports accurate and meaningful.

40. Lastly, there was a purely technical change to be made to operative paragraph 23 of the draft resolution, due to the fact that the Security Council had the previous day decided by its resolution 808 (1993) to establish an international criminal tribunal. Accordingly, the revised operative paragraph 23 would read:

> "Welcomes Security Council resolution 808 (1993) of 22 February 1993, by which it has decided to establish an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia, and invites the Secretary-General in his report to the Council to propose that the tribunal should also determine whether the crimes committed fall within the scope of the Convention on the Prevention and Punishment of the Crime of Genocide;".

41. He urged the Commission to adopt the draft resolution by consensus, since that was by far the strongest way that it could send a message on the serious violations committed in the former Yugoslavia.

42. Mr. BAUM (Germany) said that his delegation endorsed the revision read out by the observer for Denmark on behalf of the sponsors. The revision was a purely technical one which took account of recent developments in the Security Council.

43. Mr. KUSHAIRI (Malaysia), speaking on behalf of the delegations of the countries members of the Organization of the Islamic Conference (OIC), proposed that operative paragraph 8 should be amended to read:

> "Condemns in the strongest terms those involved in all violations of human rights and international humanitarian law in the former Yugoslavia, recognizing that the leadership in territory under the control of Serbs in the Republics of Bosnia and Herzegovina and Croatia, the commanders of Serb paramilitary forces, the Yugoslav People's Army,

and political and military leaders in the Federal Republic of Yugoslavia (Serbia and Montenegro) bear primary responsibility for most of these violations;".

44. The delegations of the OIC countries had been actively involved in the negotiations on the text of the draft resolution and many of their proposals had already been incorporated therein. However, those delegations considered that the draft resolution should also reflect the concern expressed by the Special Rapporteur about the Serbian policy of ethnic cleansing, and the deteriorating situation in the Republic of Bosnia and Herzegovina as a result of continuing indiscriminate Serbian attacks on civilian population centres.

45. The amendments to operative paragraph 8 proposed by the delegations of the OIC countries addressed two important issues. Firstly, they strongly opposed the inclusion of the phrase "by all sides to the conflict", which would constitute a gross injustice to the victims, placing them on a par with the aggressors. Their amendments therefore condemned "those involved", that is, all the individuals responsible. At the same time, they retained the rest of operative paragraph 8, which identified the parties which should bear primary responsibility.

46. Secondly, the original text of operative paragraph 8 failed to include the Yugoslav People's Army, among the Serbian elements, correctly condemned in the strongest possible terms for the acts of aggression and atrocities in the Republic of Bosnia and Herzegovina. It would be a serious mistake to overlook an element of external aggression, since the situation in the Republic of Bosnia and Herzegovina was not merely a civil war, as some people were trying to pretend.

47. The delegations of the OIC countries did not wish to be associated with the argument put forward in certain quarters that the United Nations should take a so-called balanced stance in dealing with the situation in Bosnia and Herzegovina. He would like to know how States Members of the United Nations could balance the interests of the victims, mainly Bosnian Muslims, against those of the perpetrators of one of the worst crimes against humanity in recent history. The delegations of the OIC countries thus appealed to all members of the Commission to vote in favour of their amendments.

48. Mr. BAUM (Germany), speaking on behalf of the European Community members of the Commission, said that, on the whole, the draft resolution was a sound compromise text which the sponsors wanted to see adopted by the largest possible majority. That goal might not be achieved if the delicate balance between its various parts was disturbed. The delegations he was representing therefore asked the Commission to adopt the draft resolution as it stood, after the revision of operative paragraph 23.

49. Mr. ERMACORA (Austria) said that his delegation had participated in numerous consultations aimed at the adoption of the text by consensus, so that the Commission could send a firm and unanimous message to the world on the subject of the grave human rights abuses in the territory of the former Yugoslavia. The amendments proposed by the representative of Malaysia on behalf of the delegations of the OIC countries might endanger the adoption of

the draft resolution by consensus and he therefore asked whether they could not be withdrawn.

50. Mr. RAMISHVILI (Russian Federation) said that his delegation fully supported the views expressed by the representatives of Germany and Austria. The amendments proposed by the delegations of the OIC countries were not acceptable and his delegation would vote against them.

51. Mr. MADEY (Observer for Croatia) said that the draft resolution under consideration was a product of lengthy discussions and negotiations and a demonstration of the world community's concern at massive and unprecedented violations of human rights and international humanitarian law.

52. The sole responsibility of the Federal Republic of Yugoslavia and the Serbian side was clearly established and generally condemned. However, some countries were trying to ignore that fundamental truth and to distribute the responsibility by referring to "all sides to the conflict", a tendency reflected in operative paragraph 8 of the draft resolution. In his delegation's opinion, such an approach was inappropriate and would not lead to the resolution of the human tragedy taking place in the former Yugoslavia. In that connection, the Special Rapporteur's latest report included some conclusions that seemed to have been rather hastily drawn.

53. With regard to operative paragraph 33 of the draft resolution his delegation hoped that the Centre for Human Rights, the Special Rapporteur, the Working Group on Enforced and Involuntary Disappearances and the International Committee of the Red Cross would take immediate action to resolve the problem and not merely develop proposals for a mechanism to address the subject.

54. Ms. PARK (Canada) said that her delegation, as a sponsor of the draft resolution, accepted the technical revision by the observer for Denmark, which updated the text in the light of the action taken by the Security Council. However, it deeply regretted that the delegation of Malaysia had found it necessary to propose a substantive amendment. The Commission must speak with a single voice against the violations of human rights in the former Yugoslavia.

55. The draft resolution before it was the product of weeks of careful and delicate consultations and accurately reflected the contents of the Special Rapporteur's report. Her delegation hoped therefore that the delegation of Malaysia would reconsider its amendments in the light of the comments made and in the interests of sending a strong consensus message from the Commission, of providing full support for the work of the Special Rapporteur, and of dealing with the real suffering of all victims of the terrible tragedy.

56. Mr. SCHIFTER (United States of America) said that his delegation had worked hard with all interested parties on the preparation of two consensus texts on the situation in the former Yugoslavia in which all concerns had been taken into account. Many of the suggestions made by the delegations of the IOC countries had been incorporated. However, the end of the road had been reached. Anyone who read the texts carefully would realize that the blame had been fairly and accurately apportioned and that the shocking role played by the Serbian forces had been correctly highlighted so that a clear

and unanimous message could be sent to the perpetrators of atrocities in the former Yugoslavia. His delegation therefore urged that the Malaysian amendment be rejected and that the draft resolution be subsequently adopted by consensus.

57. Mr. BIJEDIC (Observer for Bosnia and Herzegovina) said that the draft resolution was a step in the right direction, although the idea of all sides being guilty needed to be dropped from operative paragraph 8. He fully supported the substantive amendments proposed by the representative of Malaysia, since any effort to equate victim and aggressor would be unjust, unrealistic and immoral, and would be seen as a policy of appeasing the aggressor and achieving peace at any price.

58. Mr. NASSERI (Islamic Republic of Iran) said he supported the Malaysian amendments. The delegations of the OIC countries would have liked to reach a consensus and had made compromises in the negotiations on the wording of the draft resolution. However, it was not merely a question of preserving a balance. The amendments proposed by Malaysia were very moderate but made it impossible to equate the aggressor and the victim. To vote against them would be to help further ethnic cleansing.

59. Mr. OZKAROL (Observer for Turkey) said that, since his country currently held the chairmanship of the Conference of Ministers for Foreign Affairs of the Organization of the Islamic Conference, he wished to explain the joint position adopted by OIC members in respect of the draft resolution before the Commission. The members of OIC recognized the merits of the text, which was designed to reflect the circumstances of the tragedy taking place in Bosnia and Herzegovina and to highlight the massive and flagrant violations of human rights in Kosovo, Sandjak and Vojvodina. It also contained some pertinent proposals to alleviate the suffering of the populations concerned while endorsing the recommendations made by the Special Rapporteur, whose honesty and sense of duty were appreciated by the members of OIC.

60. When introducing his report, the Special Rapporteur had warned against indifference and cynicism. The draft resolution was certainly not indifferent and, indeed, announced a strengthening of the international community's vigiliance with regard to the unprecedented tragedy taking place. Nevertheless, the delegations of countries members of OIC had great difficulty in accepting operative paragraph 8, which placed all parties to the conflict in Bosnia and Herzegovina on an equal footing, without distinguishing between aggressor and martyr.

61. It also failed to attribute any guilt to the Yugoslav army, which was one of the elements most responsible for the policy of ethnic cleansing pursued by the Serbian party against the Muslims in Bosnia and Herzegovina, where it supplied most of the weapons used by the Serbs and was fighting against the army of the Republic of Bosnia and Herzegovina. Thus, although they recognized the general correctness of the draft resolution, the delegations of the OIC countries had refrained from sponsoring it on account of those two disagreements regarding the wording of operative paragraph 8, to which Malaysia had accordingly proposed its amendments.

62. Mr. HUSSAIN (Pakistan) said his delegation supported the Malaysian amendments. Two important principles were involved. The first was the need to distinguish between aggressor and victim. To do otherwise would be like placing the victims of Auschwitz on an equal footing with their Nazi persecutors. The second principle was the condemnation of aggression against any State Member of the United Nations, as provided for in the Charter. Bosnia and Herzegovina was a State Member of the United Nations and had been attacked by the Yugoslav army. When a Member State in the Persian Gulf had been attacked, many resolutions had been adopted and action had been taken.

63. Bosnia and Herzegovina had no oil, but many of its people had been killed and many of its women raped. The culprits were the Serbs, the victims were the Bosnian Muslims, and rape had been used as an instrument of war. There could be no question, therefore, of striking a balance between aggressors and victims.

64. Mr. PAVICEVIC (Observer for Yugoslavia) said that his Government's position on the draft resolution before the Commission was set forth in its statement of 19 February 1993. The draft resolution was a continuation of an unprecedented one-sided campaign conducted in the Commission against the Federal Republic of Yugoslavia and the Serbian people as a whole. The text was full of political connotations and allegations, whose possible implications could be harmful for the peace process at Geneva and within the Security Council.

65. No tribute had been paid to the Federal Republic of Yugoslavia for the earnest efforts it was making within the framework of the International Conference on the former Yugoslavia to promote an early peaceful settlement of the crisis in Bosnia and Herzegovina. Rather than being commended for a number of steps it had taken in that context, the Federal Republic of Yugoslavia was being singled out as being solely responsible for the situation.

66. The allegations regarding the status of minorities in Yugoslavia were far from being true, and the facts were being deliberately distorted in order to cause political instability. Furthermore, the only aim of the systematic and shameful campaign mounted in the world media was to lay the groundwork for international action against Yugoslavia, of which the present proceedings in the Commission on Human Rights were just a part.

67. Such an approach by the Commission did not help promote respect either for human rights or for the fundamental standards laid down in the Convention on the Elimination of All Forms of Racial Discrimination and in the Charter. To use the Commission on Human Rights for the achievement of political aims was to degrade the Commission's role in securing the preservation and observance of human rights throughout the world.

68. Moreover, the adoption of the draft resolution would be a classic example of the violation of the fundamental human right of the Serbian people to exist and not to be discriminated against and would set a dangerous precedent for the future work of the Commission. In any case, human rights were not the only or even the primary concern in the current discussion. If they were, the

Commission would also ask what had happened to the tens of thousands of Serbs who had disappeared from many places in Croatia.

69. The amendment proposed by the representative of Malaysia on behalf of the delegations of the countries members of OIC clearly showed that the conflict in Bosnia and Herzegovina was mainly based on religion. The representative of the Bosnian Muslims had just implied, in fact, that he did not want peace, which was the only setting in which the rights of ethnic groups and individuals in Bosnia and Herzegovina and all other parts of the former Yugoslavia could be protected. However, although his delegation found the draft resolution unacceptable, it was always prepared to cooperate with United Nations bodies and missions that were trying to establish the facts objectively.

70. Mr. QADAR (Bangladesh) said his delegation endorsed the Malaysian amendments to operative paragraph 8. The term "all sides" was incorrect, since there was no reason to believe that the Governments of Croatia and of Bosnia and Herzegovina had ordered any violations of human rights, although some of their citizens might have been involved. Moreover, the proposal to include a reference to the "Yugoslav army" was also very valid since, although the text stated that the military and political leaders in Yugoslavia bore primary responsibility, there was no reference to the link provided by the Yugoslav army.

71. Mr. HESSEL (France) said that the sole valid purpose of the current debate was to send a clear message to the world regarding the situation in the former Yugoslavia. A divisive vote would be sad. The Special Rapporteur had discovered violations of human rights in all parts of the country and, if operative paragraph 8 were read in conjunction with the rest of the text, it would be found that the parties involved were not placed on the same footing, the special responsibility of one party being emphasized. He therefore appealed to the representative of Malaysia to avoid a vote.

72. Mr. HALINEN (Finland) said that his delegation was opposed to the Malaysian amendments.

73. Mr. MORLAND (United Kingdom) also urged the Commission to adopt the draft resolution as it stood, since it reflected the real situation and the balance of the evidence. In the conclusions contained in his report, the Special Rapporteur had stated that the political and military leaders of the Bosnian Serbs bore the primary responsibility for the ethnic cleansing policy carried out in total disregard for their obligations but that, with the prolongation of the conflict, more and more atrocities were being committed by the other parties. The draft resolution in its existing wording reflected that balance.

74. Mr. GUBARTALLA (Sudan) said that the situation obtaining in the former Yugoslavia fully justified the amendments proposed by the representative of Malaysia. The reference to "all sides" would reveal a lack of political will on the part of the Commission. In addition, the proposed reference to the "Yugoslav army" would put the atrocities committed into their real perspective. As it stood, operative paragraph 8 distorted the whole balance of the draft resolution.

75. Ms. ATTAH (Nigeria) said her delegation objected to the phrase "by all sides to the conflict" in operative paragraph 8. Although violations were taking place on all sides, everyone knew who was committing most of the aggression in the former Yugoslavia. Even if the Commission did not want to refer to the aggressor by name, that did not mean the draft resolution should label all parties to the conflict aggressors. The phrase should therefore be reconsidered.

76. The CHAIRMAN, summarizing the discussion, said that two proposals had been submitted to the Commission on draft resolution E/CN.4/1993/L.16. The first proposal, submitted by the observer for Denmark, had been to revise paragraph 23. As that had been accepted by the sponsors, it had become an integral part of the draft resolution. The second proposal, submitted by Malaysia and containing amendments to paragraph 8, had not been accepted by the sponsors to the draft resolution, and was therefore to be put to the vote.

77. Mr. PACE (Secretary of the Commission) said that the financial implications of operative paragraphs 32 to 34 of draft resolution E/CN.4/1993/L.16, which would also apply mutatis mutandis in the event that draft resolution E/CN.4/1993/L.21 was adopted, would be in the order of US$ 1,313,000 for 1993 and US$ 278,400 for 1994, covering travel, temporary assistance and consultancy requirements. The detailed statement of financial implications would be circulated as document E/CN.4/1993/L.31.

78. At the request of the representative of the Islamic Republic of Iran, a vote was taken by roll-call on the amendment proposed by Malaysia, to draft resolution E/CN.4/1993/L.16.

79. Sri Lanka, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Bangladesh, Cuba, Guinea-Bissau, Indonesia, Iran (Islamic Republic of), Libyan Arab Jamahiriya, Malaysia, Mauritania, Nigeria, Pakistan, Sudan, Syrian Arab Republic, Tunisia.

Against: Argentina, Australia, Austria, Brazil, Bulgaria, Canada, Chile, Colombia, Costa Rica, Cyprus, Czech Republic, Finland, France, Germany, Japan, Lesotho, Mauritius, Mexico, Netherlands, Peru, Poland, Portugal, Republic of Korea, Romania, Russian Federation, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

Abstaining: Burundi, Gabon, Gambia, India, Kenya, Sri Lanka.

80. The amendment proposed by Malaysia was rejected by 29 votes to 13, with 6 abstentions.

81. The CHAIRMAN said that, as he had heard no request for a vote on draft resolution E/CN.4/1993/L.16 as a whole, he took it that the Commission wished to adopt it without a vote.

82. It was so decided.

Draft resolution on the rape and abuse of women in the territory of the former Yugoslavia (E/CN.4/1993/L.21)

83. Ms. FERRARO (United States of America), introducing the draft resolution on behalf of its sponsors, which had been joined by the delegations of Argentina, Cyprus, Gambia, Lesotho, Mauritius, Nigeria, the Republic of Korea and the observers for Azerbaijan, Bosnia and Herzegovina, Cameroon, Madagascar, Malta, Myanmar, the Philippines, Singapore and the United Arab Emirates, said that she spoke for all the women and children in the territory of the former Yugoslavia who could not speak for themselves.

84. In the 1970s, she had worked as a prosecutor in New York City handling rape cases. It had been difficult for those victims but the situation of the victims in the former Yugoslavia was significantly worse. Her victims had been picked at random; those victims had been singled out because of their religion and ethnicity. Her victims had been raped at the whim of the attacker; there was evidence that those victims may have been raped at the direction of military leaders. Her victims had been assaulted once; report after report from Bosnia and Herzegovina recounted that women had been held prisoner and repeatedly subjected to gang rape over weeks and months. Her victims had received immediate medical attention; not so with those victims. Her victims had had access to a safe medical procedure to terminate a pregnancy, where necessary; those victims, it had been reported, had been forced to bear the children that had resulted from those rapes. But probably the most significant difference of all was that the rapists of her victims had been brought to justice.

85. Rape was particularly egregious in the current circumstances, because it was being used as a tool of war. The draft resolution was especially important in that it confirmed that rape was a war crime; decried its use as a weapon of war by Serb forces for ethnic cleansing; demanded that all Member States work with the United Nations to put an end to the practice; called upon the United Nations to bring the perpetrators to justice; welcomed the Security Council's decision to set up an international tribunal to try the criminals; sought medical and psychological assistance for the victims; and sent a message to all the victims in the struggle in the former Yugoslavia, particularly the women and children of Bosnia and Herzegovina, that their attackers must be brought to justice. She hoped, therefore, that the draft resolution would be adopted by consensus.

86. The action taken by the Security Council on the previous day to establish an international war tribunal necessitated a technical revision of operative paragraph 7 to read:

> "Welcomes Security Council resolution 808/1993 of 22 February 1993, by which it was decided to establish an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia".

87. Mr. PACE (Secretary of the Commission) said that the cost of implementing operative paragraph 10 of draft resolution E/CN.4/1993/L.21 was already covered in the financial implications for draft resolution E/CN.4/1993/L.16.

88. Ms. SPASIC (Observer for Yugoslavia), said that the increasingly unscrupulous misuse of the resolutions of the Commission on Human Rights for political ends was well known, but there must be a limit beyond which human suffering and humiliation could not be abused. A crime was a crime, regardless of who committed it, and a victim of a crime remained a victim, regardless of his or her race, sex or ethnic belonging.

89. As to the question of rape in the territory of the former Yugoslavia, particularly in Bosnia and Herzegovina, the truth was that the victims were Muslim, Serbian and Croatian women alike. Trusting in the good faith of those who had raised the issue, her delegation had circulated a document (E/CN.4/1993/86) containing medical evidence and statements by raped women and young girls of Serbian nationality in Bosnia and Herzegovina and Croatia.

90. The mandate of the Commission was to protect human rights without discrimination; victims must have equal treatment, and their testimonies must be of equal value. The draft resolution under consideration was, however, one-sided and imbalanced and, as such, could serve only to humiliate all the rape victims in the territory of the former Yugoslavia. Half-truths and untruths discredited the personal drama of every individual victim. Describing the victim only as a number for propaganda purposes and labelling her a Muslim were clearly the only goals of the draft resolution.

91. In the view of her Government, crimes of abuse and rape of women and children should be condemned in the strongest terms and those responsible, whoever they were and wherever their crimes had been committed, should be punished. The abuse of women in war zones, whether undertaken as part of a strategy of "ethnic cleansing" or for other purposes, was an utterly inhumane act and a crime that was not only contrary to international humanitarian law, but also to the basic precepts of morality, honesty and dignity.

92. The CHAIRMAN said that, as he had heard no request for a vote, he took it that the Commission wished to adopt draft resolution E/CN.4/1993/SR.34 without a vote.

93. It was so decided.

94. Mr. RAMISHVILI (Russian Federation), speaking in explanation of vote, said that his delegation unreservedly condemned the violations of human rights and humanitarian norms in the former Yugoslavia, regardless of who the authors of those violations were. From the outset, it had firmly supported the idea of creating a commission to establish the facts on war crimes and an international tribunal to judge those responsible. The Yugoslav conflict was too complex for there to be a good side and a bad. The only way to reach a settlement was through peaceful negotiations and mutual concessions.

95. His Government had no intention of trying to exonerate any party to the conflict, but directing public indignation against one side only while absolving the others was a short-sighted approach that would encourage a sense of impunity. The effort to blame an entire people for the events in the former Yugoslavia was both dangerous and unacceptable and it was unfortunate that a number of members of the Commission should have continued their one-sided approach, ignoring all nuances and the rapidly changing situation.

An extreme tone, an uncompromising attitude, unbalanced judgements, name-calling and highly emotional resolutions would hardly help the search for a solution and created the danger of even greater internal instability in the States in the territory of the former Yugoslavia and in the Balkans as a whole.

96. It was regrettable that his delegation's efforts to modify draft resolution E/CN.4/1993/L.16 had not secured support. For example, it was not objective to place the primary responsibility for the human rights violations in the former Yugoslavia on the leaders of the Federal Republic of Yugoslavia (operative para. 8). His delegation also objected to the references to Kosovo, an integral part of a sovereign State. The wording on Kosovo in operative paragraph 24 was likely to promote extremist nationalist and separatist tendencies in that part of the Balkans.

97. His delegation was also unhappy about certain aspects of draft resolution E/CN.4/1993/L.21. The overall thrust of that text and certain specific passages were highly politicized and exceeded the competence of the Commission, especially as the International Committee of the Red Cross and the Commission of Experts established pursuant to Security Council resolution 780 (1992) had taken up very cautious positions on that complex question.

98. His delegation was convinced that the international tribunal that the Security Council had decided to establish would provide more precise and objective definitions of war crimes and genocide and a more balanced judgement than that of the Commission on the extent to which each side was responsible for such crimes.

99. However, his delegation had decided not to impede a consensus on the draft resolutions, an attitude that reflected the active role his Government intended to play in resolving the conflict. That did not mean that it agreed with all the provisions of those documents or even with their overall thrust. Thus, had there been a vote, his delegation would not have supported operative paragraphs 8, 24, 25 and 28 of draft resolution E/CN.4/1993/L.16 or the third and fifth preambular paragraphs and operative paragraph 2 of draft resolution E/CN.4/1993/L.21.

100. Mr. JIN Yongjian (China) said that his Government was concerned about the deterioration of the situation in the former Yugoslavia and called for an end to all violations of human rights there. It was essential for all parties to the conflict to strive to find a peaceful solution in the framework of the International Conference on the former Yugoslavia.

101. His delegation supported draft resolution E/CN.4/1993/L.16 on the whole and had joined the consensus thereon; its position on linking the Commission on Human Rights and the Security Council was, however, known to all.

102. Mr. CHANDRA (India), said, with reference to draft resolution E/CN.4/1993/L.16, that no one could condone the human rights violations in the territory of the former Yugoslavia. However, by contemplating the establishment of a United Nations observer mission to parts of the Federal Republic of Yugoslavia without securing the consent of the

authorities of that country, the resolution disregarded the cardinal principle of sovereignty. His delegation was also uncertain about the practicability of calls for the opening of humanitarian relief corridors, the creation of safe areas, etc., implementation of which would require the prior endorsement of the countries concerned. Since such endorsement was not forthcoming, it wondered how those provisions could be put into effect.

103. In view of the gravity of the situation, his delegation had not wished to block a consensus but, if there had been a vote, it would have abstained. The measures contained in the draft resolution should not be seen as creating a precedent but as having been adopted in the light of an extraordinary situation.

104. Mrs. GALVIS (Colombia) said that although her delegation had joined the consensus on both draft resolutions, it was concerned that a number of the elements contained therein could establish some unfortunate precedents, because they referred to the autonomy of the Commission in dealing with human rights problems.

105. Vigilant monitoring should be accompanied by a strategy for disseminating human rights information in the former Yugoslavia, but the draft resolutions did not reflect that aspect, which had been one of the Special Rapporteur's most important recommendations. Reports by regional bodies not forming part of the United Nations system, however important, should not be taken into account in resolutions if the information underlying them had not previously been submitted to the Commission for its consideration.

106. Mr. GONZALEZ (Mexico) said that his delegation had joined the consensus because the human rights violations in the former Yugoslavia must be condemned and mechanisms must be found to mitigate their effects, while laying the foundations for a solution to the conflict. It could not be ignored, however, that a halt to the human rights violations was directly linked to the ending of the conflict. The United Nations must work to foster a new basis for coexistence among the various communities, while avoiding a selective and unbalanced slant.

107. His delegation was concerned that the procedures and terms of reference of the United Nations organs, particularly the Economic and Social Council were not being respected. Furthermore, the resolutions contained concepts that were insufficiently developed. It was inappropriate to establish a direct link between the Commission on Human Rights and the Security Council, not only because such an action ignored the Economic and Social Council but also because it could increase de facto the Security Council's powers and distract it from its own main responsibility, namely, the maintenance of international peace and security. His Government had reservations about subjects that exceeded the terms of reference of the Commission.

108. In addition, the Commission should endorse the recommendations of bodies outside the United Nations system, such as the Council of Europe and the Conference on Security and Cooperation in Europe, before it forwarded them to Member States.

The meeting rose at 6 p.m.